

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

The Specification has been amended to correct the recitation in the first paragraph to claim priority under 35 USC 120.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claims 1, 20, 55, 62, 81 and 116 have been amended. Accordingly, claims 1-122 are presented for examination.

Claim 20, 55, 81, and 116 have been amended to obviate the rejection of those claims under 35 USC 112. For basis for the changes to claims 55 and 116, see applicant's specification at paragraphs 14, 38-46 and 49-52.

Likewise, independent claims 1, and 62 have been amended to obviate the rejection under 35 USC 101.

Various claims were rejected under 35 USC 102 as anticipated by Walker et al. application (20040039639). Other claims were rejected under 35 USC 103 over Walker in view of Examiner Notice. These rejections of the claims are traversed and reconsideration is respectfully requested.

The Walker et al. (20040039639) application filed on August 18, 2003 appears to claim priority to and be a continuation of application serial no. 09/349,860 that has a filing date of July 9, 1999. However, the chain to this earlier application was broken due to a failure to file a Petition for an Extension of Time in the 09/349,860 application. Specifically, the (20040039639) application was filed on August 18, 2003 with a UTILITY PATENT

APPLICATION TRANSMITTAL sheet with the box for Continuation checked, accompanied by a Preliminary Amendment with a "CROSS-REFERENCE TO RELATED APPLICATIONS" paragraph to be added to the new application which paragraph provided a cross-reference to the 09/349,860 application. The Preliminary Amendment to the (20040039639) application further cancelled claims 1-76 and added claims 77-90 to the new application.

This was a Preliminary Amendment to the new (20040039639) application, i.e., it did not reference the purported parent application in the caption for the amendment and did not purport to amend the parent application. It contained an authorization to charge fees for any extension of time required for this Preliminary Amendment. But it did not request an extension of time in the 09/349,860 application. The 09/349,860 application had previously received an Office Action dated May 13, 2003 that was subject to a shortened statutory period for response of 3 months. The shortened statutory period for response of 3 months ended on August 13, 2003 and was never extended.

Per 37 CFR 1.4 and 1.5 and the MPEP at 710.02(e), any Petition for an Extension of Time must be directed toward and be filed in the application that needs to be extended.

Applicants are cautioned that an extension of time will not be effected in the prior application by filing a petition for an extension of time, extension fee, or fee authorization, in the continuing application. This is because the petition for an extension of time (or constructive petition under 37 CFR 1.136(a)(3)) must be directed toward and filed in the application to which it pertains in accordance with 37 CFR 1.4 and 1.5.

Accordingly, there is a break in the chain and the (20040039639) application filed on August 18, 2003 is not entitled to the priority of serial no. 09/349,860. Note that the requirement to pay the extension fee for the then-pending parent application is a statutory requirement that cannot be waived. Since the present Landesmann application is entitled to a priority date of October 30, 2000, reconsideration and withdrawal of this rejection is respectfully requested. Note that during the period when there was a break in the chain of

priority, the Walker (20040039639) application is not prior art to the present application, which was filed shortly after the Walker parent 1999 filing date and it cannot be converted to patent-defeating prior art retroactively.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

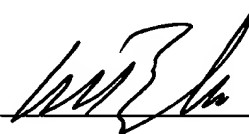
Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date October 13, 2005

By



FOLEY & LARDNER LLP
Washington Harbour
3000 K Street, N.W., Suite 500
Washington, D.C. 20007-5143
Telephone: (202) 672-5485
Facsimile: (202) 672-5399

William T. Ellis
Attorney for Applicant
Registration No. 26,874